

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
REPLY BRIEF**

No. 77-1131

To be argued by: ALAN M. DERSHOWITZ.

United States Court of Appeals for the Second Circuit.

UNITED STATES OF AMERICA,
APPELLEE,

v.

ROBERT P. MARCHAND, JR.,
APPELLANT.

ON APPEAL FROM A JUDGMENT OF THE
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF VERMONT.

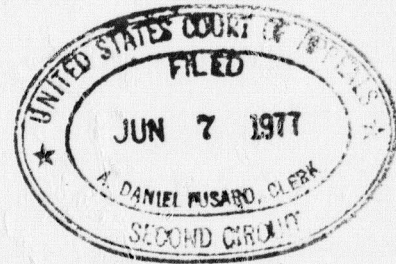
Reply Brief for the Defendant-Appellant.

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Reply Brief for the Defendant-Appellant.

INTRODUCTION

The government's brief attempts to argue the legal sufficiency of facts which are not in evidence. Both by extrapolating from and misconstruing the actual testimony which occurred at trial, the government attempts to weave a web of suggestion and circumstance to compensate for the total lack of evidence positively identifying Appellant Marchand as Big Foot, the marijuana supplier. The government's effort fails; its brief falls far short of demonstrating sufficient evidence to support Marchand's conviction. Moreover, it fails to meet the substantial and complex arguments raised by appellant in connection with the evidentiary rulings which shaped the trial.

Because the government's brief does not in any way undercut the basic structure of appellant's main brief, this Reply will be limited to exposing the most glaring weaknesses and inadequacies in the government's position. As to all those points not argued here, appellant relies on his main brief's presentation of the arguments.

ARGUMENT

I THE GOVERNMENT FAILS TO ESTABLISH THAT ROY'S
ADMISSION THAT HE "MISLED" THE GRAND JURY CAN
PROPERLY BE INTRODUCED AS SUBSTANTIVE EVIDENCE
OF IDENTIFICATION

Critical to the government's claim of sufficiency is its reliance on Roy's testimony that he "misled" the grand jury into believing that he "could" identify Marchand as his marijuana supplier. Time and again, the government turns to this testimony to supply the missing link of positive identification which the evidence otherwise lacks. (See, e.g., G.B.¹ 6, 14, 22, 26, 29, 38-39, 40.) However, as will be fully demonstrated below, the government's reliance on this testimony is totally misplaced both as a matter of fact and of law, and, moreover, to stake Marchand's conviction upon it in any way would gravely endanger the constitutional integrity of the trial.

¹G.B. refers to the Government's Brief and A.B. to the Appellant's Brief.

- A) The Government Fails to Establish That the Federal Rules of Evidence Allow the Use of Roy's Admission That He "Misled" the Grand Jury as Substantive Evidence of Identification

The government relies (at G.B. 6) on the following testimony as authority for its proposition that Roy had indicated to the grand jury that Marchand was the supplier:

Q: Isn't it a fact, Mr. Roy, that you led the Grand Jury to think that you could identify Robert MARCHAND as the person who supplied you with the marijuana?

A: I guess that is what it came down to.

* * * * *

Q: And you led a Grand Jury to believe that this person -- this friend of yours, was the one who supplied you with marijuana, is that right?

A: Yes, that is what it came out to be.

(368, 369)

Plainly, these questions call for the witness to adopt, as his own, the prosecutor's opinion of the impact of the witness's testimony. Equally plain is the fact that the witness's answers are merely a tentative acknowledgment of that opinion. It is critical to recognize that these opinions -- when viewed in the context of what actually transpired at the grand jury -- are not testimonial facts, but merely conclusions upon which reasonable jurors could differ. The government's attempt to utilize Fed. Rules of Evid. 801(d) (1) (A) to present these opinions -- and these are all that it

has² -- as substantive evidence that Roy had identified Marchand as his supplier is a substantial encroachment on the jury's duty to hear and resolve factual issues.

Moreover, the government's choice of this form of questioning (i.e. calling for the witness to adopt an opinion as to the impact of his grand jury testimony) over the traditional method of presenting prior inconsistent statements to the jury forces the jury to speculate about both the existence and the content of the actual prior testimony. What makes this choice especially damning to the government's case here is that it resulted in an instruction to the jury, under the aegis of Fed. Rules of Evid. 801(d)(1)(A), to give substantive effect to these speculations. (492).

The government's hollow assertion that the Rule does not require prior inconsistent "statements" to be presented in a transcribed or verbatim form (G.B. 28) misses appellant's point entirely. In giving substantive effect to such "statements," the Rule mandates that the statement not only be inconsistent but also have been given "under oath subject to the penalty of perjury at a trial, hearing or other proceeding,

² Apparently, the government (G.B. 14) also attempts to rely on Roy's response to the prosecutor's statement that Roy's grand jury testimony had gotten the appellant in trouble. (372). Roy's answer is, on its face, nothing more than an apologetic denial that he had that intent. (372, 373). The government's reliance on this as substantive evidence that Roy had identified the appellant as his supplier is patently misplaced.

or in a deposition." Fed. Rules of Evid. 801(d)(1)(A). The Congressional intent underlying the imposition of these conditions is so well documented as to be beyond dispute. Congress desired to limit the circumstances under which "prior inconsistent statements" may be given substantive effect to those situations in which the following three reliability factors are likely to obtain: 1) that the "statement" actually took place; 2) that ordinarily the statement will have been recorded for future use; and 3) that the "statement" will have been made under the pains and penalties of perjury. United States v. Lee, 540 F.2d 1205 (4th Cir. 1976); H.R.Rep. 650, 93rd Cong., 2d Sess. 13; W. Blakely, Substantive Use of Prior Inconsistent Statements Under the Federal Rules of Evidence, 64 Kent L.J. 3 (1977).

Recognizing that the purpose of Rule 801(d)(1)(A) is to give substantive effect only to those "prior inconsistent statements" which possess the requisite indicia of reliability, it would be illogical and inconsistent to permit use of the Rule to give substantive effect to mere speculation. The very terms of the Rule were engineered to result in the existence of a reliable "statement". The government, in arguing that the Rule does not require the use of the most reliable version of the statement, refuses to acknowledge this clear purpose of the Rule.³

³The government's reference to Fed. Rules of Evid. 613
[CONTINUED ON NEXT PAGE]

Moreover, Rule 102, which was intended to serve both as a statement of purpose and a guide for construction of the Federal Rules of Evidence, would dictate the use of the most reliable version of the "statement." Rule 102 instructs that the Rules are to be construed to secure fairness in administration and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined. Certainly the appellant's contention that Rule 801(d)(1)(A) should be construed to require the presentation to the jury of the most reliable version of the proffered statement is more in accord with Rule 102 than the government's assertion that Rule 801 permits them to withhold the actual contents of the prior statement, thus permitting the jury to give substantive effect to speculation and conjecture.

The only legal principle offered by the government in opposition to these considerations is not only out of date but also out of context. In support of its contention that Rule 801(d)(1)(A) does not require the presentation to the

[FOOTNOTE #3 CONTINUED FROM PREVIOUS PAGE]
(G.B. 39) is, of course, irrelevant. That Rule merely holds that when used solely for impeachment (i.e. not given substantive effect) prior inconsistent statements need not be shown nor their contents disclosed to the witness. This Rule is entirely consistent with the requirements of Rule 801 which deals with the very different considerations involved in giving substantive effect to prior inconsistent statements which may not have been subjected to contemporaneous cross-examination.

jury of the most reliable version available of the prior inconsistent statement, the government offers an 1878 Supreme Court case and §260 of McCormick, Evidence, 2d Ed., both of which deal with an entirely distinct category of evidence known as "former testimony." (G.B. 28). While it is true that both "prior inconsistent statements" and "former testimony" are exceptions to the common law hearsay rule, there the analogy ends. "Former testimony", codified in Rule 804 (b), is an exception to the hearsay rule, while "prior inconsistent statement" is defined as not hearsay. "Former testimony" requires that the declarant be unavailable as a witness; "prior inconsistent statement" not only requires that the witness be available but also subject to cross-examination. "Former testimony" requires that the declarant have been subject to cross-examination at the time the statement was made; "prior inconsistent statement" does not.

Despite these essential distinctions, however, the government asserts -- without any meaningful support -- that the construction of the Prior Inconsistent Statement Rule urged by the appellant would contradict one of the traditional methods of proving former testimony."⁴ (G.B. 28).

⁴The method of proof referred to by the government is the rendition of the purport of prior testimony from the unaided memory of any firsthand observer, exact words being unnecessary (G.B. 28). Although appellant does not perceive the relevance of this issue, it may be significant that the government's description of this method of proof at common law, while correct as far as it goes, is incomplete. According to Wigmore the fair rule, and the one generally applied, [CONTINUED ON NEXT PAGE]

That this is so is neither readily apparent nor readily deducible. However, assuming arguendo that it was so, it would seem to be, at best, slight justification for permitting the government to withhold, without any legitimate purpose, the most accurate and reliable version of available evidence, to the defendant's substantial prejudice.

Finally, in its only case remotely on point, the government cites United States v. Castro-Ayon, 537 F.2d 1055 (9th Cir. 1976) for the proposition that Rule 801(d)(1)(A) permits testimony as to the "substance" of prior statements to be considered as substantive evidence. With that proposition as used in that case, the appellant has no argument.⁵ The phrase "substance of the prior statements" as used by the Castro-Ayon Court refers primarily, if not exclusively, to the contents of the statements. This is clear from the Court's acknowledgment that the "statements Agent Pearce recorded satisfy the conditions of Rule 801(d)(1)(A)..." 537 F.2d at

[FOOTNOTE #4 CONTINUED FROM PREVIOUS PAGE]
to "former testimony" is to require that the witness be able to state all the material parts of the testimony, both in direct and in cross-examination. Indeed, the very case cited by the government, Ruth v. Rock Island, 97 U.S. 693 (1878), requires that the "main and principal points" of direct and cross, taken together, must convey the substance of the former testimony. VII Wigmore on Evidence, 3rd Ed. §2099 at 492 (1940).

⁵ It should be noted that the court in Castro-Ayon observed that "[t]he issues in this case involve the circumstances of the prior statement, not the circumstances of introducing the statement into evidence at trial." 537 F.2d at 1057, n. 1 (emphasis added). It is precisely the latter issue which is pivotal in this case.

1057 (emphasis added).

At the bottom line, the government's contention (G.B. 29) that Roy's opinions (quoted in the beginning of this argument) amounted to testimony as to the "substance" (i.e. were content-descriptive) of Roy's prior testimony is, on any viewing of the facts, totally untenable. The most that can be said for the testimony is that it conveyed the prosecutor's and/or the witness's opinion as to the impact of the testimony on the grand jury. This manner of introducing evidence was not calculated to prove that a sworn identification -- positive or otherwise -- had taken place, nor was it the most accurate and reliable means of adducing evidence.⁶ Under the policy and purpose of Rule 801(d)(1)(A), the introduction of prior testimony in the way done by the government in the instant case -- without satisfying the test of reliability -- simply cannot be given substantive effect. To hold otherwise would relegate the indicia of reliability mandated by the Rule to the meaningless function of threshold questions, thus permitting the less reliable -- or, in this case, the purely speculative -- version of the statement to be given substantive effect. Clearly, such a result flies in the face of both the

⁶ It should be noted that a review of Roy's grand jury testimony (175), when examined together with his pre-trial voir dire (49-80) and the trial court's subsequent rulings (154-159) makes it highly questionable that Roy ever positively identified the appellant as the supplier.

terms of the Rule and the underlying congressional intent. In addition, it abrogates the defendant's right to have the jury hear and determine factual issues.

Accordingly, the trial court's instruction that Roy's statement at trial could be given substantive effect (492), over the repeated and specific objections of the appellant (442-44, 494-95), was reversible error. Fed. Rules of Evid. 103; United States v. Sisto, 534 F.2d 616 (5th Cir. 1976).

B) Constitutional Considerations Preclude the Use
of Roy's Admission that He "Misled" the Grand
Jury as Substantive Evidence of Identification

Even if Roy's admission that he "misled the Grand Jury" could be construed as a "Prior Inconsistent Statement" within the meaning of Federal Rule of Evidence 801(d)(1)(A) -- or even as a Prior Identification within the meaning of Fed. Rule of Evidence 801(d)(1)(C)-- constitutional considerations preclude its use as substantive evidence against Marchand. Based upon its fact-finding that Roy's prior photographic identification "such as it was, [was] infected by suggestion" (159-60), the trial court ordered the "identification testimony of Victor Roy" to be suppressed (166). That order contemplated -- as the government well knew -- that no testimony of Roy's given in connection with, or arising out of, his "infected" photographic identification could be presented to the jury. (See also 259, where, after a voir dire on the issue of whether Roy had an independent adequate basis to make an in-court identification, the trial court reaffirmed the order suppressing any "reference" to Roy's pre-trial photographic identification.)

Critically, it must be recognized that, while the particular photographic procedure found by the judge to be impermissively suggestive was the pre-Grand Jury procedure conducted by Agent Handoga (147-48), the effect of the

the suppression order was to exclude from consideration by the jury Roy's Grand-Jury "identification" testimony as well. As the record of the Grand Jury minutes reveals, Roy's entire Grand Jury testimony (171-75) contains only two questions and answers which in any way could be described as an "identification" of the supplier:⁷

Q: Did Special Agent Handoga of the Drug Enforcement Administration this morning show you a series of photographs and ask you if you recognized one of the individuals in that group?

A: Yes.

Q: You picked out one of those photos, is that right?

A: Right.

Plainly, Roy's Grand-Jury "identification" testimony, such as it was, was nothing more than an adoption of the "suggestive" identification Roy had made earlier that day.⁸

Accordingly, the presentation to the petit jury of Roy's Grand-Jury "identification" testimony would, like the presentation of what occurred in Agent Handoga's office, be in clear violation of the judge's suppression order.

There can be no question that the introduction into evidence of Roy's Grand-Jury "identification" testimony, were it done directly, would violate the Due Process Clause

⁷The remainder of Roy's testimony described, inter alia, his arrest, prior conversations with "Big Foot" and prior narcotic purchases.

⁸The record establishes that Roy's selection of Marchand's photograph in Agent Handoga's office occurred approximately two and one-half hours before his Grand Jury appearance. (Cf. 147 with 171).

of the Fifth Amendment. Kirby v. Illinois, 406 U.S. 682 (1972); Simmons v. United States, 390 U.S. 377 (1968); Stoval v. Denno, 388 U.S. 293 (1967); Brathwaite v. Manson, 527 F.2d 363 (2nd Cir. 1975), cert. granted, 425 U.S. 957 (1976). No less, the introduction of the essence of this prior "infected" testimony through indirect means -- as the government tried to do at trial -- is constitutionally prohibited.⁹ To the extent that the Federal Rules of Evidence might otherwise dictate a different result, they must, in light of statutory origin, yield to the constitutional considerations.¹⁰

⁹Although the main thrust of the Appellant's contention here is that Roy's Grand-Jury "identification" testimony could not be introduced at trial as substantive evidence against Marchand, the same constitutional principles which preclude its use as substantive evidence preclude its use for any other purpose. Moreover, if any use were to be permissible, under Supreme Court precedents in analogous areas, that use would necessarily be limited to impeachment. See, e.g. Harris v. New York, 401 U.S. 292 (1971).

¹⁰The government's attempt to circumvent the force of this argument by relying on the judge's finding that Roy had an adequate independent basis to make an in-court identification and that the word "photograph" did not occur in Roy's trial testimony (G.B. 29, footnote) falls far short of the mark.

As noted above, the "identification" testimony which Roy gave before the Grand Jury was not independent from -- but was inextricably bound to and dependent upon -- the "infected" photographic selection that Roy had made in Agent Handoga's office only a few short hours before. And the fact that the word "photograph" did not occur in Roy's trial testimony is wholly irrelevant, since the judge's order called for the suppression of "pre-trial identification testimony," not for the deletion of the word "photograph."

II THE GOVERNMENT'S CLAIM OF SUFFICIENCY IS
RIDDLED WITH FACTUAL ERROR AND DISTORTION

The government's reliance on Roy's testimony, while perhaps the single most serious flaw in the government's case -- particularly in light of its constitutional dimensions -- is not the only defect which undermines the government's claim of sufficiency. Indeed, that claim of sufficiency is based upon a series of evidentiary arguments which distort and misconstrue the record and impute to witnesses testimony which simply never occurred.

A.) Nowhere is this clearer than in the government's rendition of Hillman's testimony. Hillman never testified, as the government asserts, that Roy "told Hillman that he had identified Marchand to federal authorities as his marijuana supplier" (G.B. 21, citing 424-425, emphasis added; see also G.B. 9, 25, 40). Hillman merely testified he had "received that impression from what [Roy] had said." 424 Indeed, when asked the direct question on cross-examination, "didn't Victor [Roy] tell you he had identified Mr. MARCHAND as someone who had supplied marijuana...?", Hillman testified unequivocally "no, he never told me that." Id. Nor did Hillman ever testify, as the government asserts, that Roy had "identified pictures" of Marchand and his fiancée Ann the day he appeared before the grand jury. (G.B. 40, citing 418, 420 (emphasis added); see G.B. 9.) Hillman testified only

that he had learned from Roy that pictures of Marchand and his fiancée "had been shown". (420, see 418.) Finally, Hillman never testified that Roy had discussed with him "the fact that he [Roy] was involved with Bob Marchand in a marijuana transaction." (G.B. 9, citing 419.) Rather Hillman testified merely that he had had a conversation with Roy from which he "was under the impression that Victor had spoken to some people about an incident involving himself and some marijuana and that during the conversation he had had [sic] that Bob had been mentioned and the whole thing involved some sort of a transaction at the University of Mass." (419)

It is not clear what significance the government believes could be attached to Hillman's testimony were it to have occurred as the government claims; certainly Hillman's reports of Roy's statements as to what Roy supposedly said about or did in connection with Marchand would be multiple-level hearsay and could not properly be used as substantive evidence against Marchand. But in any event, that question need not be reached because it is clear from the record of this case that Hillman's testimony did not occur as the government claims.

B.) Perkins' testimony is also the subject of considerable pervasive distortion by the government. First, at various critical points in its brief, the government unqualifiedly asserts that Perkins "identified Marchand as 'Bigfoot' prior to trial." (G.B. 22, emphasis added. See G.B. 8, 26, 35.)

That of course never happened: as the trial record clearly establishes (338-339) -- and as the trial court found in connection with the identification suppression motion (148-149) -- Perkins did not make a positive identification but rather selected two photographs which he felt most closely resembled the two persons he had observed involved in the transaction. Indeed, the government conceded at one point in the brief that "Perkins dated and initialed the two photographs selected as the men most closely resembling his supplier." (G.B. 19, emphasis added.)¹¹

A second unqualified assertion scattered throughout the government's brief is that Perkins "identified one number from an old telephone billing statement as that used to reach Big-foot." (G.B. 19 (emphasis added); see G.B. 20, 22, 26.) However, like the assertion that Perkins "identified" Marchand's photograph, this phone number assertion totally ignores Perkins' actual testimony. Perkins merely testified that one number "could be it" (330, emphasis added) but that he did not remember if he "ever called that number" himself. Id. Generously characterized, this was at best a tentative "identification." Moreover, Perkins admitted on cross-examination that he could

¹¹The government also noted that Perkins' selection of Marchand at trial was merely "as one person who resembled his supplier." (G.B. 17.) It failed to note however that Perkins also chose two other men in the courtroom as also resembling the supplier (322).

not state with certainty that "622-8206" was the number "used if someone had had to reach Big Foot," and that in fact it was "just a number [he had] guessed at as opposed to other numbers that were on this sheet." (337) This admission reduced the phone number selection from a tentative "identification" to no "identification" at all.

Finally, the government treats the Perkins sketch as if it were an evidentiary item whose accuracy were not in doubt.¹² (See G.B. 18, 35.) Yet the evidence establishes convincingly that Perkins drew that sketch without "a good memory of Big Foot" and with a "blank mind" (339). Indeed, he himself disavowed its accuracy at the time he drew it (343, 345) -- and that disavowal stands unimpeached on the record of this case.¹³

Stripped of its distortions and inaccuracies, Perkins' testimony returns to the form in which it appears on the trial record -- uncertain and tentative and wholly inadequate to support Marchand's conviction beyond a reasonable doubt.

¹²Although at one point the government states that the "value [of the sketch] as evidence lay not so much in its accuracy as in the fact that it was completed close in time to the crime and that it shows Perkins had a clearer idea of Big Foot's appearance than he thought at trial" (G.B. 35), that is a bootstrapping argument: only by assuming the conclusion -- that the sketch is a fair likeness of Big Foot -- can one reach the conclusion that the sketch shows a "clearer idea of Big Foot's appearance than [Perkins] thought at trial."

¹³The fact that Perkins was "trying to draw that picture to the best of his ability and recollection" (345, emphasis added) does not, of course, impeach his testimony that he failed to achieve a fair and accurate representation despite his intention and desire to do so.

III THE GOVERNMENT FAILS TO CARRY ITS BURDEN
OF JUSTIFYING THE WARRANTLESS SEIZURE OF
MARCHAND'S DRIVER'S LICENSE

It is, of course, well-settled that the government bears the burden of justifying a warrantless search and seizure of personal property. U.S. v. Jeffers, 342 U.S. 48 (1951). The government has failed to meet that burden in this case.

Relying primarily on the case of Adams v. Williams, 407 U.S. 143 (1972), the government asserts that the seizure of Marchand's driver's license was justified as an "intermediate response" to determine Marchand's identity (G.B. 42). The government's position, however, fails to acknowledge that it has presented absolutely no evidence that Marchand was ever asked to identify himself before his license was removed from his wallet. By failing to present such evidence, the government fails to "articulate suspicion" based on facts, which is the condition precedent of even the very limited intrusion authorized in Adams. The total absence of even a hint of such evidence from the record of the pre-trial suppression hearing (see 108-149) compels the conclusion that the government has failed to carry its burden of proof and that the search and seizure were therefore illegal.

In order to side-step this result the government relies (at G.B. 45) on the language of the trial court that the defendant "apparently refused to cooperate by giving his name" (163). There is not, however, one shred of

evidence upon which the government or the trial court can support this assumption. Indeed, in the absence of an contrary testimony from Detective Adcock or from any other government witness, Marchand's testimony that he was never asked (135-36) stands un rebutted.

Moreover, on the factual record of this case -- in which the only piece of evidence relevant to a determination that prior to the seizure of his driver's license Marchand was a source of suspicion was the fact that he was there¹⁴ -- the government's reliance on Adams is wholly misplaced. Certainly Marchand's presence alone, if it justified any intrusive conduct at all, justified only the least intrusive means of obtaining the sought-after identification.

Lacking evidence that this least intrusive step (i.e. a simple request for identification) was ever taken, the government may not be permitted to rely post hoc on assumptions -- wholly lacking in support in the evidentiary record -- about an alleged lack of cooperation in order to

¹⁴The government's suggestion that the finding of guns "heighten[ed] [the officers'] suspicions" (G.B. 44) is totally misleading. The record is clear that the seizure of Marchand's driver's license had absolutely no connection with the finding of guns (see Agent Harris's testimony, 108-24). Indeed, the sequence of events indicates that the guns, which were found in Higgins' bedroom (where Marchand was never observed) were found after Marchand's identity had been obtained (see 138). Moreover, it cannot be overlooked that there is absolutely no evidence on the record that Marchand was ever even frisked prior to his arrest.

to justify prior police intrusions. The words of the court in U.S. v. Coates, 495 F.2d 160 (D.C. Cir. 1974) -- a case the government cites (G.B.43) -- **are** apposite here:

[t]he mere fact that an officer may stop someone to ask a question does not necessarily make it reasonable to lay hands on the person involved. Id. at 165.

Under this principle and indeed under the principles articulated in Adams v. Williams, the government's intrusive conduct here cannot be justified and the fruits must be suppressed.

Nor can the government claim that the constitutional error of admitting against Marchand the fruits of the initial unlawful intrusion -- the note reflecting Hillman's communications with Roy -- is harmless beyond a reasonable doubt. See Chapman v. California, 386 U.S. 18 (1967). The government itself describes that note as evidence which "further substantiates" (G.B. 21) and provides a "vital link" (G.B. 23) in the government's case against Marchand. Further it is clear from the trial record that Hillman, upon whose testimony the government relies so heavily in arguing the sufficiency of the evidence (see pp. 15-16, supra), would not have been called to the witness stand but for the need to explain away the incriminating aura suggested by the note. Certainly in such a close case, such as this, where the sufficiency of the evidence is marginal at best, any piece of incriminating or even suspicious evidence may tip the scale against the defendant; and it simply cannot be said on the record of this case that the note did not do just that.

CONCLUSION

For the reasons set forth in this Reply and in appellant's main brief, Robert P. Marchand respectfully requests that his conviction be reversed and a judgment of acquittal entered, or alternatively that his case be remanded for a new trial, or that the indictment be dismissed.

Respectfully submitted,

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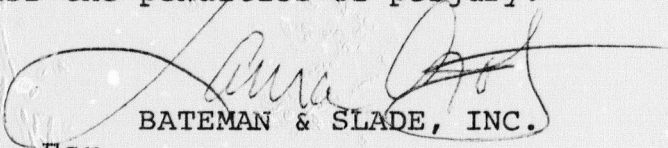
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ROBERT P. MARCHAND, JR.

We certify that we have served two copies
of the reply brief upon opposing counsel, by
first class mail, postage prepaid, addressed
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Signed under the penalties of perjury:


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